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ABSTRACT

There are a number of ramifications of Public Law 94-142 (Education for All Handicapped Children Act) and state legislation for the education of handicapped children in Philadelphia, Pennsylvania. Classes for the learning disabled were formed for the first time at the secondary level. Many private schools were forced to close because public schools were now providing classes meeting the needs of the handicapped students. Teacher transfer in compliance with teacher desegragation guidelines have caused problems as has the question of teachers receiving payment for attendance at individualized instructional plan meetings held outside the regular working day. Lay-offs in the school system caused a work-to-rule action which forced an issue of who was responsible for certain functions in the care of the handicapped. Transportation has been inadequate since the public school system took responsibility for the busing of its handicapped population. Funding these mandates has fallen far behind and a number of lawsuits are pending. (PHR)

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SPECIAL EDUCATION FOR THE CHILDREN OF OUR CITIES - PHILADELPHIA

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SPECIAL EDUCATION FOR CHILDREN OF OUR CITIES

An attempt to deal with the political and financial issues related to special education for children in urban schools, without discussing the administrative and programmatic issues, is difficult if not impossible. The complexity of the subject and the relative recency and the impact of new legislation, and the litigation that preceded and continues with increased intensity is causing educators, employee unions, school board members, politicians, the media and even the general public in Philadelphia to become increasingly familiar with myriad issues and problems related to special education.

Early in 1976, Dr. Michael P. Marcase, Superintendent for the School District of Philadelphia, made public statements to the school staff, the school board and the general public indicating that the education of the handicapped was to receive a top priority. At the time of this priority statement, the School District was involved in extensive litigation in the United States District Court for the Eastern District of Pennsylvania in separate class action cases involving the retarded and the learning disabled.[1] *Within two years a third class action was brought to the same court and raised the issue of "a twelve month per year program and related services."*[2]

The combination of this litigation coupled with new federal and state legislation caused tremendous changes within Philadelphia's schools. These changes were accompanied by financial, labor, personnel and other major problems.

Until 1976, the School District of Philadelphia had difficulty in spending its state allocation for special education. Partially this was due to the uncertainty of available funding and partially it was due to an inability to realize the scope of special education and the legal obligation of the School District. Secondary students who had learning disabilities or emotional problems were recruited by the many approved private schools located in Philadelphia or its nearby suburbs. Parents frequently received "scholarships" which, combined with tuition payments to the private schools

from the School District and the Commonwealth, provided for most of the required tuition. However, many "extras" were not included and parents were billed for these essential related services. Philadelphia, with the consent of the Commonwealth, had several costly "experimental" special education programs. Several of these programs had been in existance for several years without any evaluation or research design. In 1975 the Pennsylvania legislature passed Act 144 which guaranteed tuition payments of $4100 for a student who was enrolled in a state approved private school. The law provided for larger payments for multiple handicapped students with the Commonwealth of Pennsylvania paying approximately seventy-five per cent of the costs and the local districts the remainder. Furthermore, the law required that no additional payments be required from the parents of handicapped children. State education officials quickly realized that the local share for tuition payments for children placed in approved private schools was far less than what it would cost the district to provide for an appropriate placement in a public school. The state officials issued regulations requiring all such private school placements to have prior approval from the Pennsylvania Department of Education. The impact of Act 144, the requirements of P.L. 94-142 regarding the least restrictive environment, and the litigation for the learning disabled had ramifications on the approved private schools and the School District of Philadelphia.

Classes for the learning disabled were established at the secondary level for the first time in the public schools of Philadelphia. Additional classes for L.D. students were formed at the elementary level. With the advent of the multi-disciplinary evaluation team and the need for appropriate placement in the least restrictive environment, two things became evident: first only the most severe problems were now being referred to private schools and secondly the total being referred to private schools greatly decreased.

This change in policy presented problems to both the approved private achools and the School District of Philadelphia. In the past the private schools had recruited widely and assisted parents with the paperwork. Students were admitted with the assurance of retroactive payments when the applications were approved. Due process procedures were not a problem. There was a ready supply of trained teachers and assistant teachers. Now that the changes were in effect, the student recruitment was stopped. The type of the student was different, requiring many additional services. The number of available students was reduced and finally the teacher supply was reduced because the new programs in the public schools provided many additional jobs at wages and benefits better than could be obtained in the private sector.

Several schools closed their doors----some with little or no notice and the School District of Philadelphia became the operator of what formerly were private schools. In other instances, the School District absorbed the students in existing or newly created programs. Political pressure was frequently exerted by parents to gain admittance to an approved private school. In every instance this pressure was resisted and no child was admitted to a private school without being recommended by the multidisciplinary evaluation team from the School District and reviewed by the Pennsylvania Department of Education. The reaction of the parents and advocacy groups varied. When two schools for learning disabled closed in the middle of October 1976, parent reaction and their advocacy groups was uniformly negative. This past December a school for multiply handicapped blind students closed and the School District received unanimous approval for its efforts in taking over the program.

The example of the private school problem is just one of the problems Philadelphia has encountered during the past three years while attempting to provide an appropriate program for its exceptional children. I include the gifted child in my definition of exceptional. Some of the general financial and political problems have been caused by the introduction of new programs, inadequate transportation, inadequate financial support for excess costs at both the state and federal levels closing or changing public school programs because they no longer meet new requirements, litigation, conflicts due to federal and state regulations, non public exceptional students, inter and intra union disputes and grievances and the rise of new advocacy groups. Although the recitation of the causes was rather hurried, the implications of the problems and the issues raised are ones that are common to most urban areas and in many instances are not confined to the city school systems.

As an example of the universality of the issues, let us examine some of the issues that were raised by Philadelphia's employe bargaining units and some of the concerns expressed by the state and national unions and associations.

One of the most recent issues involved teacher transfers. Philadelphia, as in most large cities, is attempting to racially desegregate its schools. As a result of litigation in Pennsylvania's Commonwealth Court, the School District of Philadelphia has a court approved plan for voluntary desegregation. In order to implement this plan, Philadelphia made application for federal (ESAA) funds. The Office for Civil Rights indicated that in order for Philadelphia to receive these funds to achieve student racial desegregation, the school faculties must also be desegregated according to federal guidelines. This implementation immediately was challenged, in some cases, by lawyers for plantiffs in the Frederic L. and PARC cases. As a result, transfers were rescinded until the end of the current year. Although this was a clear violation of the Philadelphia Federation of Teachers Agreement with the School District, the PFT took no action.

In another widely reported action HEW specifically took direct action to void a clause in the PFT Agreement as it applied to teachers having representation at an IEP conference when the parent has an advocate present. Essentially, the issue developed from a clause in the PFT Agreement granting teachers the right to have a PFT representative present when the teacher is required to attend a conference and the parent has an advocate at the conference. Incidentally, this clause had been in the agreement prior to the concept of the I.E.P. HEW Deputy Assistant Secretary for Management, Thomas S. McFee stated very clearly that, "Union involvement in I.E.P. meetings would not square with Congressional intent regarding such meetings."[3]

Another issue that we faced in Philadelphia was whether an art specialist teacher in an elementary school had to work with severely impaired students. The position of the School District was that every child was entitled to this program if included in the I.E.P., and it was the duty of the art specialist to obtain expert assistance if she felt inadequate in working with impaired students. The School District was prepared and did offer such help. On April 25, 1978 the teacher and PFT officials appeared in U. S. District Court before Judge Edward Becker in an effort to get the court to rule on the matter. The Judge did not rule and the School District's directive has not yet been subject to the formal grievance procedure.

Some other PFT problems and solutions: Should teachers be paid for attendance at due process hearings and I.E.P. conferences held outside the regular working day? The School District agreed that additional remuneration was proper and twenty-five dollars per meeting [4] was the agreed upon amount. A meeting was defined as up to three hours beyond regular work hours.

Another issue that is a cost factor is class size. After the School District negotiated maximum class size, the Pennsylvania Department of Education issued new class size maximums. In one case the number was higher and in another the number was

lower. Nonetheless the School District cannot go higher than that which was agreed to by the PFT Agreement. On the other hand, if it exceeds the state maximum, reimbursement will not be made. In effect, the state has negotiated a "lower class size" in one of the handicapping areas than the PFT agreed in their negotiations.

Other areas that involve inter-union problems concern the transportation of handicapped students. Tightly written job descriptions made it unclear whether it was the responsibility of the bus driver and bus aide to get the severely handicapped student into the school building or just inside the door of the school where the classroom aide had the responsibility for the child. This originally was not a problem but because of many lay-offs, unions resorted to working only to the rule until all laid off employees were rehired. Another problem that resulted from reductions in force involved the classroom aides working with handicapped students. Philadelphia employs many aides in federal programs, early childhood, kindergarten, etc. in addition to aides for the handicapped, although the aides for the handicapped received special in-service training in most instances. However, when lay-off notices were sent, school system seniority prevailed and many aides for the handicapped were low in seniority and consequently were laid off. As part of the "bumping process," we found that an aide from another program frequently accepted a position with profoundly impaired students but relinquished after a few days or sometimes in less than one day. The result, as you might suspect, caused many disruptions in programs for the severely handicapped.

Although I have given examples at the local level, seriousness of the situation is recognized at the national level. An editorial by Albert Shanker in the January 1978 issue of the American Teacher discusses the cost implications of P.L. 94-142 by comparing some of the problems faced by New York City in the area of special education.[5] In November 1978, the AFT explained the reason that the AFT Department of Educational Issues is so concerned with P.L. 94-142.

"Reasons for the great amount of time spent by the department on P.L. 94-142 and its implementation go beyond our immediate concerns with current practices eroding the quality of education. We must see that federal appropriations, already substantial but insufficient, are greatly increased. Given the schools' present financial condition, their only means of meeting P.L. 94-142's mandate without greater federal assistance will be to dip into the regular education budget. The public's mood makes the prospect of obtaining additional state or local monies very bleak."[6]

Mr. Shanker repeated his concern in his column in the New York Times on March 18, 1979 when he stated, "But while the President has given with one hand, he seeks to take away with the other. In two programs - funding for the education of the handicapped children and impact aid----Congress must do more than the President has proposed."[7]

The AFT is not alone in its concern with the implications of P.L. 94-142. The Pennsylvania State Association (PSEA), an NEA affiliate was reported as having sent a memorandum to one of its locals stating that "The official PSEA stand does not support mandated I.E.P.'s."[8] The Philadelphia Association of School Administrators representing Philadelphia's principals quickly gained the concession that they were to be paid at the same rate as teachers if they took part in I.E.P. or due process conferences after regularly scheduled working hours. They also prevailed upon the Superintendent to write a "Save Harmless Clause" that would "Protect principals from liability resulting from their name being placed on the I.E.P. form as the 'responsible individual.'"[9]

Are these items isolated or are they part of a national movement. In the February 1979 issue of Education and Urban Society, the issue is addressed directly:

"An example of a federal program with collective bargaining implications is the Education for All Handicapped Children Act. In the majority of the districts we visited, school and teacher organization officials reported the mandates of P.L. 94-142 would soon be the subject of bargaining if they were not already. Many teacher organizations were taking cues from their national affiliates and demanding that teachers be given release time to prepare Individual Education Plans, that handicapped students

who are mainstreamed be given extra weight in computing class sizes, and that teachers be provided with adequate in-service education before handicapped children are mainstreamed."[10]

The issues enumerated have all been considered by the Philadelphia Federation of Teachers and discussed in informal discussions with the Philadelphia School District administrators or have been formally presented as a collective bargaining demand. A careful reading of National AFT and NEA newsletters and periodicals will find these issues frequently mentioned.

Another issue which Philadelphia faced was the increased need for transportation services. As a result of the district's financial problems, the school board cut back on the purchase of replacement buses in 1973. Each succeeding year as financial problems arose, the transportation budget was cut. In 1976 when additional classes for the severely handicapped were opened in less restrictive environments, the lift buses were not available, nor were funds appropriated until there was a crises situation. (The children I am speaking about were formerly served in institutions either private or funded by the state, and the school district previously provided teachers to the institution for on-site instruction).

As the number of newly identified handicapped students became greater, particularly in the areas of learning disabilities, emotionally disturbed and severely impaired, the transportation situation became more acute. Our special education telephone hotline reports indicated that approximately fifty per cent of our complaints involved transportation services to handicapped students.

Although the Commonwealth of Pennsylvania has mandates requiring the education of all exceptional children including the gifted, the funding flow has not been as prompt as the mandate. Several school districts have instituted various lawsuit in an

attempt to have the funding follow along with the mandate. Thus far no court has ruled for the district, although in a recent decision involving education for gifted children, the court ruled that the School District has to provide the mandated program whether or not funds were appropriated, but the court also indicated that the School District might have recourse by suing the state.[11]

Philadelphia is finding that there are other factors which are now having a much greater impact than heretofore on the financial structure of special education. There has been an increase in advocacy groups, many of them are single purpose with a limited constituency. Some have joined forces to act as advocates in litigation or by exerting pressure through the media to achieve programs which may be desirable but not neccessarily mandated on appropriate educational programs required by law. The issue of physical therapy is a major one at the present time.

Private School placement is also a problem area in this respect. Earlier I indicated some general problems associated with the approved private schools. It is a regular occurrence for parents and advocacy groups to compare the public school unfavorably in an attempt to obtain enrollment in an approved private school. The strict interpretation of the position that the least restrictive placement is the public school and our ability to locate sufficient numbers of children with a particular handicap coupled with the state's formal review process, has enabled us to largely overcome this problem. This is not true in many places. In testimony given before the House of Representatives on March 27, 1979, the President of the National School Boards Association stated, "school personnel and school board members are telling us in increasing numbers that they are frequently under pressure from parents to enroll their children in elaborate private institutions, rather than adequate but not as elaborate, school district facilities."[12]

In Pennsylvania the approved private schools are feeling the financial pinch and have cooperated in order to have legislation introduced to increase their payments. Philadelphia has approximately 2900 students enrolled in approved private schools. If the state approves a $400 per child increase, the Philadelphia share would be $280,000. Legislators are wary about increasing the education budget so, in effect, schools from the private sector are competing with public schools for the same dollars. Actually the legislation introduced (H.B. 2826) requests an increase of $1,000. If granted Philadelphia would need $3,300,000 as its share.

Please don't get the idea we are anti-private school. We are aware of their problems and the services they provide. It is unfortunate that the condition exists as described in a newsletter when the school announced a budget with $100,000 deficit.[13] Those schools with endowments can use their funds for short run, but others are not so fortunate.

New York City has had an experience similar to Philadelphia. A report issued in January 1977 showed that private school tuition was less than the incremental costs to the public schools. "The same report also stated that it was estimated that twenty per cent of the students in the private schools could be served in public schools."

Although the general financial picture in the Philadelphia Public Schools is bleak, the funding formula from the state plus federal monies appears to be satisfactory. However, unless the state appropriates additional funds plus inflationary increases the situation could change. Also, since special education is a top priority, this division has not been subject to cutbacks, but has been steadily expanding. This sometimes leads to some incongruous events when other educational areas are cut.

Special Education is undergoing a "not so quiet revolution" because of the legislation and litigation. The pressure from the courts thus far has been supportive and it appears that the citizenry back the Superintendent and the Board placing special education as a top priority. We who are working in the area realize that we must continue to earn this support by supplying quality services for all exceptional children.

REFERENCES

1 - Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania 334 F Supp. 1257 (E.D. Pa. 1971), and Frederic L. v. Thomas, Civil Action No. 74-52.

2 - Armstrong v. Kline et al., Civil Action No. 78-172.

3 - Ibid.

4 - Pennsylvania Teacher, 1:7, February, 1978

5 - American Teacher, January, 1978, p. 13.

6 - American Teacher, November, 1978, p. 6.

7 - The New York Times, March 18, 1979, p. E9

8 - Information Legislative Service (Pa. School Boards Assn.), July 12, 1978, p. 8.

9 - PASA Alert #97, December 23, 1977

10 - Education and Urban Society, February 1979, p. 148.

11 - Central York School District; Commonwealth Court, March 26, 1979.

12 - Testimony of Margaret S. Buvinger, President National School Boards Association, March 27, 1978.

13 - Green Leaves (Newsletter of Green Tree School, Philadelphia 19144) January 1979

14 - Board of Education of the City of New York, The Cost of Educating Handicapped Pupils in New York City, January 1977, p. 60